IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Arbitration Petition No. 380 of 2007
with
Chamber Summons No.1670 of 2007

Nouveaw Exports Private Limited ..Petitioner

vs.

Reliance Silicones (India) Private Limited ..Respondents

Mr.T.N.Subramaniam, Sr.Counsel with Mr.Ashutosh Gawade i/b M/s Dhuru and Co. for petitioner.
Mr.S.U.Kamdar, Sr.Counsel i/b M/s G.D.Talreja and Associates for respondents.
Ms.LManjiri Parasnis for applicant in Chamber Summons No.1670 of 2007.

CORAM: S.C.DHARMADHIKARI J
29th October,2007

P.C.

1. Heard the learned Counsel for the parties.

2. The order passed on 24th September, 2007 has been modified on 1st October, 2007 and now in so far as Khopoli property is concerned, no interim measures are being pressed at this stage. Liberty is reserved to the petitioners to apply for any reliefs in terms of the said property as and when occasion arises. Hence, the petitioners may move this Court or Arbitral Tribunal for appropriate interim measures.

3. With regard to Vashi property, it has been

clarified before me that there are proceedings which are pending before BIFR/AIFR/Delhi High Court. My attention is invited to the affidavit which has been filed in this Court on 17th October, 2007. In the said affidavit, it has been stated that the issue of Khopoli plant is subjudice before the Hon'ble Delhi High Court. Further with regard to Vashi property also, I am informed that the proceedings are pending before BIFR. It has been stated on oath before me that subject to the orders passed by BIFR/AIFR/Delhi High Court and without any appropriate directions therein, the question of alienation or sale of Vashi property does not arise at all. In such circumstances and when it is pointed out to me on oath and not disputed by either parties that these are the assets of the sick industrial company which can deal with it only in such a manner as the law permits, then, there is no question of the petitioners having any apprehension of Vashi property being alienated or sold. Therefore, all that can be directed at this stage is to permit the petitioners to renew the request for alienation or sale of Vashi property in case the proceedings before BIFR/AIFR/Delhi High Court come to an end and any orders are made in the same permitting the respondent company to sell the property. The petitioners are parties before BIFR

and in such circumstances, at this stage, apprehension is not well founded.

4. However, without prejudice to the rights and contentions of the parties, it is directed that the petitioners would be at libety to apply for interim measures either before this Court or Arbitral Tribunal after 8 weeks after the disposal of the proceedings by appropriate authorities including Delhi High Court and such application if made would be dealt with and disposed of in accordance with law uninfluenced by any observations made in the orders passed by this Court.

5. With regard to removal of articles and goods, earlier an order was passed by me and in that order it was recorded that the petitioners are at liberty to come to the premises at Vashi and remove the documents, raw materials, finished and semi finished goods. This statement was made by Mr.Kamdar for the respondents and at that stage there was no intervention on behalf of the workmen.

6. Now, a chamber summons is filed by Shramik Sangharsha Sena which has placed on record the proceedings before the Industrial Court, Thane. It has been contended before me by Ms.Parasnis that

there is Industrial Court's order of 19th April, 2007 in complaint (ULP) No.1115 of 2007 which restrained the petitioners from removing the machinery, equipments, assets until legal dues of the workmen are paid. She has refrerred to further order passed by the Industrial Court directing the petitioners to deposit the legal dues within three weeks.

7. She has also referred to complaint (ULP) No.125 of 2007 wherein a direction is issued to deposit Rs.44,72,702/- The orders in that behalf are made on 17th May, 2007. She submits that these orders have not been complied with till date.

8. Mr.Subramaniam, learned Senior Counsel on the other hand has invited my attention to the affidavit of Paresh Khambekar filed in reply to the Chamber Summons and has contended that the review petition is filed in the Industrial Court in complaint (ULP) No.125 of 2007.The order is made on 12th September, 2007 extending the stay granted earlier. In other words, he submits that compliance with the order passed below Exh.C-9 is not necessary to be made.

9. In my view, even if the petitioenrs are

permitted by the respondents to remove the goods, semi finished goods, raw materials etc. that cannot be done at this stage, more so, when they have applied for review of the Industrial Court's order. There are certain rights which are flowing in favour of the workmen from the relevant statutes which cannot be put in jeopardy. In all fairness Mr.Subramaniam also states that the petitioners would remove the documents and articles, goods and raw materials only after the Industrial Court permits them to do so. In such circumstances, the order passed on 24th September, 2007 by me in this petition is modified and subject to the Industrial Court permitting the petitioners to remove the articles and goods so also raw materials, they will be at liberty to do so provided they comply with the order and directions in accordance with law. The respondents in any event will not object removal thereof as a statement made in that behalf is made before me and reiterated on oath on affidavit.

10. This arbitration petition is, therefore, disposed of. Needless to state that with regard to Khopoli property the matter stands concluded by order dated 1st October, 2007 so also the liberty granted to the petitioners to make appropriate

application. Mr.Kamdar's apprehension that the order passed in this arbitration petition would be construed as some sort of clog on Khopoli property is not well founded. Khopoli property is free from all injunctive orders or any other interim measures at this stage. Thus, this order and the orders passed earlier do not prevent the Respondent-company from going ahead and selling the Khopoli property subject, ofcourse, to the directions of BIFR and Delhi HighCourt. This order does not mean that the petitioners' contention that there is a charge on Khopoli property stands rejected finally. These are matters which must be decided on their own merits either in the arbitral reference or in such proceedings as the petitioners may deem fit to institute hereafter.

11. Petition is disposed off in the above terms. No costs. Chamber Summons stands allowed to the above extent.

(S.C.DHARMADHIKARI J.)